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No. 03-52

In The

Supreme Court of the United States

AMERICAN AIRLINES, INC., and TERRY MEENAN,

Petitioners,

v.

ARTHUR GEDDES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Eleventh Circuit Court of Appeals erred in concluding that the Railway Labor Act (hereinafter the "RLA" or the "Act"), 45 U.S.C. § 151, *et seq.*, does not completely preempt state law tort claims so as to allow for removal, pursuant to 28 U.S.C. § 1441(b), of a cause of action by an airline employee against his employer for retaliatory acts.

PARTIES TO THE PROCEEDING

The parties to the proceedings are those listed in the caption of the case.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Arthur Geddes respectfully submits this Brief in Opposition to the Petition for a Writ of Certiorari.

OPINIONS BELOW

The opinion of the court of appeals is set forth in Petitioner's Brief (App. A) and is reported at 321 F.3d 1349 (11th Cir. 2003). The opinion of the district court is also set forth in Petitioner's Brief (App. B) and is not reported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

This case concerns the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, the pertinent portions of which are set forth in Appendix C, of Petitioner's Brief.

STATEMENT OF THE CASE

Factual Background

Geddes is an aircraft technician employed by American Airlines, Inc. ("American") at the Miami International Airport. Geddes brought an employment discrimination lawsuit against American, in 1997, which suit was ultimately dismissed.

On or about August 2, 2001, Geddes filed a discrimination complaint against American, with the Equal Employment Opportunity Commission ("EEOC"), asserting that, since Geddes initiated his 1997 complaint, certain employees and supervisors had demonstrated retaliatory and malicious intent toward Geddes in an attempt to force him to resign or to have him fired. As an example of such retaliatory treatment, when a co-worker made knowingly false statements that Geddes had threatened to do him bodily harm at the workplace, American, with knowledge of the falsity of such statements, ratified, repeated, and republished the statements to its agents, officers, directors, and employees, as well as union representatives, and included the statements in Geddes' permanent personnel file.

Geddes thereafter filed a complaint against American in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, styled *Geddes v. American Airlines, Inc.*, Case No. 02-03105-CA-13. The complaint alleged state law claims of defamation of character (Count I), negligence (Count II), and negligent supervision and retention (Count III), based upon the retaliatory actions set forth above.

On March 4, 2002, American removed Geddes' action to the United States District Court for the Southern District of Florida, asserting both diversity of citizenship and federal question subject matter jurisdiction. After complete diversity was destroyed by the joinder of Petitioner Meenan, the case was removed solely on the basis of federal question jurisdiction. American thereafter filed a Motion to Dismiss the Geddes complaint, asserting (1) that Geddes' claims were preempted by the RLA, and (2) that

Geddes' complaint failed to state claims upon which relief could be granted.

In response, Geddes filed a motion to remand the case to the state court and a response to American's Motion to Dismiss. In his Motion to Remand, Geddes contended that the District Court lacked subject matter jurisdiction over his state law claims.

In an Omnibus Order, dated June 12, 2002, the District Court denied Geddes' Motion to Remand and granted American's Motion to Dismiss. The District Court's rulings were premised upon both simple preemption (also known as "ordinary preemption"), as to the motion to dismiss, and complete preemption, as to Geddes' motion for remand. Specifically, on the remand issue, the District Court found that, because the RLA completely preempted the state law underlying Geddes' claims, Geddes' complaint, although asserting purely state law causes of action, was properly removed, under 28 U.S.C. § 1441(b), as arising under federal law. The court went on to dismiss Geddes' claims, holding that they comprised "minor disputes" which, under the RLA, could only be submitted to statutorily mandated boards of adjustment.

The Eleventh Circuit reversed and remanded, finding that this Court had then recognized the doctrine of complete preemption in only two very narrow circumstances: § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and § 502(a) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a); and that, pursuant to this Court's opinions in *Metropolitan Life Insurance Company v. Taylor*, 481 U.S. 58 (1987), and *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994), because the RLA contains no clear manifestation of

Congress' intent to establish federal question jurisdiction therein, the doctrine of complete preemption does not apply to such statute. This Court has since reiterated the test applied by the court below, in *Beneficial Nat'l Bank v. Anderson*, 539 U.S. ___, 123 S. Ct. 2058, 156 L. Ed. 2d 1 (2003).

The Petitioners having filed a Petition for Writ of Certiorari requesting review by this Court, the Respondent files this Brief in Opposition thereto.

SUMMARY OF ARGUMENT

This Court has recently held, in *Beneficial Nat'l Bank*, that federal legislation completely preempts state law, so as to provide for federal court removal jurisdiction, only (1) where Congressional intent to confer federal court jurisdiction is clearly manifested in the text of the statute or in the legislative history thereto, as in § 301 of the LMRA and § 502(a) of ERISA; or (2) where the statutory scheme wholly displaces state law by providing an exclusive cause of action, including the substantive law and the procedures governing such claims, as in the case of usury claims against national banks under the National Bank Act. As the RLA comes within neither of the two prongs of the *Beneficial Nat'l Bank* test, the court below correctly found that federal removal jurisdiction, based upon complete preemption of state law, did not exist under the RLA, and remanded the plaintiff's cause of action to state court.

As this Court has, earlier this year in *Beneficial Nat'l Bank*, clearly and explicitly set forth the test for determining whether a federal statute will completely preempt

state law, there is no need for the Court to revisit the issue in this context.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

I. AS THE ELEVENTH CIRCUIT'S DECISION IS CONSISTENT WITH AND SUPPORTED BY THIS COURT'S PRECEDENTS ON THE ISSUE OF COMPLETE PREEMPTION, INCLUDING ITS MOST RECENT DECISION IN *BENEFICIAL NAT'L BANK V. ANDERSON*, NO REVIEW IS NECESSARY.

The Eleventh Circuit's holding herein is consistent with this Court's complete preemption decisions, including the Court's recent decision in *Beneficial Nat'l Bank v. Anderson*, 539 U.S. ___, 123 S. Ct. 2058, 156 L. Ed. 2d 1 (2003). As the Court in *Beneficial Nat'l Bank*, and in its earlier preemption decisions (including the Court's decision refusing to apply ordinary preemption under the RLA in *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 114 S. Ct. 2239, 129 L. Ed. 2d 203 (1994)), (a) has set forth at length the test for determining the applicability of the complete preemption doctrine to federal statutes, including the RLA, (b) has shown that complete preemption does not apply in the context presented herein, and (c) has ruled repeatedly in accordance with the Eleventh Circuit's holding herein, there exists no need for the Court to further consider the issues presented by the Petitioners.

Moreover, the Petitioners' claim of a conflict in authorities among the circuits is overstated. Specifically, while the Petitioners assert that decisions of the Second, Seventh, Eighth and Ninth Circuits all support their

position that claims falling within the purview of the RLA are subject to complete preemption, such is not the case. In fact, the decisions of the Second and Seventh Circuits cited by the Petitioners, *Shafii v. British Airways, PLC,* 83 F.3d 566 (2nd Cir. 1996) and *O'Brien v. Duluth, Missabe & Iron Range Ry.*, 27 F.3d 569 (7th Cir. 1994), address neither removal nor complete preemption, concerning, rather, only ordinary preemption issues. As this Court has made clear, the concepts of ordinary preemption and complete preemption are wholly different, and the mere existence of ordinary federal preemption will not confer federal court removal jurisdiction. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987).

While the decision of the Eleventh Circuit below and the decision of the Third Circuit in *Railway Labor Executives Ass'n v. Pittsburgh & Lake Erie R.R. Co.*, 858 F.2d 936 (3rd Cir. 1988), also finding no complete preemption under the RLA, may be at odds with the Eighth Circuit decision in *Gore v. Trans World Airlines, Inc.*, 210 F.3d 944 (8th Cir. 2000), and the Ninth Circuit decision in *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189 (9th Cir. 1983), the Eighth and Ninth Circuit decisions (addressed at length in Section III, below), each of which predated *Beneficial Nat'l Bank*, are no longer valid, in light of that decision, and particularly in light of this Court's *Hawaiian Airlines* decision, refusing to apply even ordinary federal preemption in the context of the RLA. Having set forth, in *Beneficial Nat'l Bank*, the proper tests for determining the application of complete preemption to a federal statute, the Court need not again address such considerations in this context.

As such, the Petition should be denied.

The *Beneficial Nat'l Bank* Tests

Beneficial Nat'l Bank considered whether a state law usury action filed against a national bank may be removed to federal court, pursuant to the doctrine of complete preemption. In determining that state law usury claims against national banks are preempted by federal law, the Court clarified the standards by which a cause of action based on state law may be removed to federal court, under the doctrine of complete preemption. Such standards, as propounded by the Court, are inconsistent with the Petitioners' position herein, and with the Eighth and Ninth Circuit decisions relied upon by the Petitioners herein.

The Court, in *Beneficial Nat'l Bank*, stated:

> . . . [A] state claim may be removed to federal court in only two circumstances – when Congress expressly so provides, such as in the Price-Anderson Act, . . . or when a federal statute wholly displaces the state-law cause of action through complete preemption.

Beneficial Nat'l Bank, 539 U.S. at ___, 123 S. Ct. at 2063. As to the latter situation, the Court recognized that the complete preemption doctrine had only been applied to § 301 of the Labor Management Relations Act of 1947 ("LMRA"), in *Avco Corp. v. Aero Lodge No. 735, International Assoc. of Machinists and Aerospace Workers*, 390 U.S. 557, 88 S. Ct. 1235, 20 L. Ed. 2d 126 (1968), and to § 502(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), in *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S. Ct. 1542, 95 L. Ed. 2d 55 (1987).

1. Congressional Intent

The Court in *Beneficial Nat'l Bank* invoked its prior rulings in *Avco*, *Franchise Tax Board of the State of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 103 S. Ct. 2841, 77 L. Ed. 2d 420 (1983), and *Metropolitan Life*, in holding that (1) the text of the statute in question, as well as (2) the legislative history thereof, must be considered in determining whether Congress had clearly manifested its intent that causes of action falling within the purview of such statute would arise under the laws of the United States. *Beneficial Nat'l Bank*, 539 U.S. at ___, 123 S. Ct. at 2063.

With regard to its decision in *Avco*, concerning § 301 of the LMRA, the Court, in *Beneficial Nat'l Bank*, explained that it had construed the statute as "not only preempting state law but also authorizing removal of actions that sought relief only under state law," and that, "[t]he necessary ground of decision was that the pre-emptive force of § 301 is so powerful as to displace entirely any state cause of action 'for violation of contracts between an employer and a labor organization.'" *Beneficial Nat'l Bank*, 539 U.S. at ___, 123 S. Ct. at 2063 (citing *Franchise Tax Board*, 463 U.S. at 23-24).

In § 301 of the LMRA, Congress specifically conferred federal court jurisdiction, as follows:

> Suits for violation of contracts between an employer and labor organization ... may be brought in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

Similarly, the Court in *Metropolitan Life* found that Congress specifically conferred federal court jurisdiction upon claims falling within the purview of § 502(a) of ERISA, as follows:

> [T]he district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

29 U.S.C. § 1132(f). Further, as the Court noted in *Metropolitan Life*, the Conference Report on ERISA, describing the civil enforcement provisions of Section 502(a), says:

> With respect to suits to enforce benefit rights under the plan or to recover benefits under the plan which do not involve application of the Title I provisions, they may be brought not only in U.S. district courts but also in State courts of competent jurisdiction. All such actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under Section 301 of the Labor Management Relations Act of 1947.

Metropolitan Life, 481 U.S. at 65-66 (quoting, H.R.Conf.Rep. No. 93-1280, p. 327 (1974)). The Court recognized that the text of the statute, as well as the conference report, made it unmistakably clear that "Congress has clearly manifested an intent to make causes of action within the scope of the civil enforcement provisions of § 502(a) of [ERISA] removable to federal court." *Metropolitan Life*, 481 U.S. 58, 66, 107 S. Ct. 1542, 1548 (1987).

Equally noteworthy, Justice Brennan, joined by Justice Marshall, wrote separately in *Metropolitan Life* to underscore that the relevant congressional intent was not

an intent that the statute should displace state law, but rather an intent that claims purportedly based on state law be removable:

> While I join the court's opinion, I note that our decision should not be interpreted as adopting a broad rule that any defense premised on congressional intent to preempt state law is sufficient to establish removal jurisdiction. The Court holds only that removal jurisdiction exists when, as here "Congress has clearly manifested an intent to make causes of action removable to federal court." In future cases involving other statutes, the prudent course for a federal court that does not find a clear congressional intent to create removal jurisdiction will be to remand the case to state court.

Metropolitan Life, 107 S. Ct. at 1548 (Brennan, J., concurring).

Under *Beneficial Nat'l Bank* and *Metropolitan Life*, congressional intent to confer federal removal jurisdiction must be shown in the statute, or in its legislative history. In this regard, *Metropolitan Life* and *Beneficial Nat'l Bank* have made clear that, absent the above quoted language from § 301 and § 502(a), neither the LMRA nor ERISA would be deemed to completely preempt state law. The RLA contains no language similar to that in the LMRA or ERISA. As such, the Eleventh Circuit was quite correct in its ruling that the RLA in no way evidences such a Congressional intent.

2. Substantive and Procedural Law Must Be Provided

This Court held, in *Beneficial Nat'l Bank*, that, absent the type of language contained in § 301 of the LMRA and § 502(a) of ERISA, to support a finding of federal removal jurisdiction, a federal statute must wholly displace a state law cause of action. The Court further held that, in order to wholly displace a state law cause of action, a federal statute must provide the exclusive cause of action, including the substantive law and the procedures governing such claims.

The Court in *Beneficial Nat'l Bank* held that:

> In the two categories of cases where this Court has found complete preemption – certain causes of action under the LMRA and ERISA – the federal statutes at issue provided the exclusive cause of action for the claim asserted and also set forth procedures and remedies governing that cause of action. See 29 U.S.C. § 1132 (setting forth procedures and remedies for civil claims under ERISA); § 185 (describing procedures and remedies for suits under the LMRA).

Beneficial Nat'l Bank, 539 U.S. at ___, 123 S. Ct. at 2063.

In finding that the National Bank Act completely preempted the field as to usury claims against national banks, *Beneficial Nat'l Bank* held that Sections 85 and 86 of the National Bank Act serve two distinct purposes: Section 85 setting forth the substantive limits on the rates of interest that national banks may charge, and Section 86 setting forth the elements of a usury claim against a national bank, providing for a two year statute of limitations for such claims, and prescribing the available

remedies and the procedures governing such claims. *Beneficial Nat'l Bank*, 539 U.S. at ___, 123 S. Ct. at 2063.

In contrast to the National Bank Act, the RLA merely provides for a mandatory arbitral mechanism to handle certain disputes. As such, as set forth at length in *Hawaiian Airlines*, the RLA does not provide causes of action (much less *exclusive* causes of action) for negligence or defamation by an airline employee against his employer. The arbitral forum provided by the RLA cannot be equated with the "exclusive cause of action" and "procedures and remedies governing that cause of action" required for complete preemption, under *Beneficial Nat'l Bank*. *Beneficial Nat'l Bank*, 539 U.S. at ___, 123 S. Ct. at 2063.

Hawaiian Airlines

This Court, in *Hawaiian Airlines*, found that the RLA, "sets up a mandatory arbitral mechanism to handle disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." *Hawaiian Airlines*, 512 U.S. at 248. The Court, in determining that an airline employee's state law claim for wrongful termination was not preempted by the RLA's mandatory "arbitral mechanism," specifically found, in accordance with the House Report accompanying the 1934 amendment to the RLA, that the RLA was intended "to provide sufficient and effective means for the settlement of minor disputes known as 'grievances,' which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions." *Hawaiian Airlines*, 512 U.S. at 254-256.

The Court further held that (1) "no proposed interpretation [of the RLA] demonstrates a clear and manifest congressional purpose to create a regime that broadly preempts substantive protections extended by the States, independent of any negotiated labor agreement"; (2) that a reading of the RLA "does not compel the conclusion that all issues touching on the employment relationship must be resolved through arbitration or that all claims involving rights or duties that exist independent of the [collective bargaining agreement] are thereby pre-empted"; and (3) "that the enactment by Congress of the [RLA] was not a preemption of the field of regulating working conditions themselves . . . " *Hawaiian Airlines*, 512 U.S. at 255-257.

Hawaiian Airlines further stands for the proposition that state law claims such as those asserted by Geddes herein, are not subject to the RLA's mandatory arbitral procedure and thus are not preempted, stating:

> Here . . . the CBA is not the "only source" of respondent's right not to be discharged wrongfully. In fact, the "only source" of the right respondent asserts in this action is state tort law. Wholly apart from any provision of the CBA, petitioners had a state-law obligation not to fire respondent in violation of public policy or in retaliation for whistle-blowing. The parties' obligation under the RLA to arbitrate disputes arising out of the application or interpretation of the CBA did not relieve petitioners of this duty.

Hawaiian Airlines, 512 U.S. at 258. As such, it is clear, under *Hawaiian Airlines*, that the RLA simply does not wholly displace state tort law regarding claims airline employees make against their employers, as asserted by the Petitioners.

As the Eleventh Circuit's decision herein is consistent with the comprehensive analysis and decision in *Beneficial Nat'l Bank* regarding the complete preemption doctrine, there is no need for the Court to revisit the foregoing issues herein.

II. THE ELEVENTH CIRCUIT'S DECISION DOES NOT DISPLACE THE ROLE OF THE FEDERAL COURTS TO ENFORCE OR SET ASIDE ORDERS OF THE ADJUSTMENT BOARD UNDER THE RLA.

Petitioners assert that the RLA provision, at 45 U.S.C. § 153(p), providing that final decisions of the adjustment boards contemplated thereunder are to be enforced by the federal district courts, manifests Congressional intent that the federal courts would have original jurisdiction over all claims filed by airline employees against their employers. Such Congressional intent is nowhere evidenced in the text of the RLA, or in its legislative history.

The RLA requires that disputes growing out of grievances or out of the interpretation or application of collective bargaining agreements covering rates of pay, rules, or working conditions (commonly called "minor disputes"), be resolved, first through conferences between the carrier and employee representatives (45 U.S.C. § 152, Sixth; 45 U.S.C. § 153, First (i); 45 U.S.C. § 184); and, if such method fails, by an adjustment board composed of representatives of the carriers and of the unions (45 U.S.C. § 153, First (i), Second, § 184).

State law claims, in order to fall within the RLA adjustment board procedure, must require, for their resolution, an interpretation of the subject collective

bargaining agreement. *Hawaiian Airlines*, 512 U.S. at 257-263 ("We have held that the RLA's mechanism for resolving minor disputes does not preempt causes of action to enforce rights that are independent of the collective bargaining agreement"). As such, many state law claims will not be subject to such procedure. Moreover, even in the case of state law tort claims which are found to fall within the purview of the RLA, the Act does not provide for jurisdiction over such claims in federal court or in any other court. Rather, such claims are relegated to the exclusive jurisdiction of the adjustment board.

While Petitioners point to portions of the RLA which, in their view, indicate that Congress was concerned about uniformity in the regulation of the airlines and railroads, such generalized concerns, standing alone, are not sufficient to provide the requisite clear indication of preemptive intent. As this Court has held:

> While we have frequently said that preemption analysis requires ascertaining congressional intent, See e.g., *Louisiana Public Service Comm'n*, [476 U.S. 355, 369 (1986)] we have never meant that to signify congressional intent in a vacuum, unrelated to the giving of meaning to an enacted statutory text. There is no text [here] . . . that might plausibly be thought to imply exclusivity – to which expression of preemptive intent in legislative history might attach. . . . [U]nenacted approvals, beliefs and desires are not laws. Without a text that can, in light of those statements, plausibly be interpreted as prescribing federal preemption it is impossible to find preemption of [state tort law claims] [*Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 501 (1988)].

See also, *CSX Transportation, Inc. v. Easterwood*, 113 S. Ct. 1732, 1737 (1993); *Cipollone v. Liggett Group, Inc.*, 112 S. Ct. 2608, 2618 (1992); *Wisconsin Public Intervenor v. Mortier*, 111 S. Ct. 2476, 2481-83 (1991). As set forth above, the RLA contains no text evidencing Congress' preemptive intent.

Here, Geddes claims that American disseminated false and defamatory information about him. Such claims arise under state law and require, for their resolution, no interpretation of the RLA or of the subject collective bargaining agreement. Rather, such resolution requires only the factual determination of whether American published such defamatory information and, if so, whether it did so with the intent to retaliate against Geddes for his earlier discrimination claim.

This Court recognized in *Lingle v. Norge Div. Of Magic Chef, Inc.*, 486 U.S. 399, 407 (1988), and reiterated in *Hawaiian Airlines*, that litigating a state law retaliatory claim presents purely factual questions pertaining to the "conduct of the employee and the conduct and motivation of the employer," and that neither required a "court to interpret any term of a collective bargaining agreement." *Hawaiian Airlines*, 512 U.S. at 261 (citing *Lingle*, at 486 U.S. at 407).

Because, as this Court ruled in *Hawaiian Airlines* and *Lingle*, certain state law claims are not subject to the mandatory arbitral mechanism provided in the RLA (i.e., claims that do not require the interpretation or application of a collective bargaining agreement), courts will, from time to time, be called upon to determine whether state law claims come within the purview of such mechanism. If it is determined that such a claim falls within the RLA, it

will be directed to the appropriate adjustment board for arbitration. If it is determined that such a claim does not fall within the RLA, it will be permitted to go forward in court. There is absolutely no indication in the text or legislative history of the RLA that Congress intended such state law claims to be removable to federal court for the purpose of such determination, only to be remanded in the event that the claim is found to fall outside the purview of the RLA.

III. THE PETITION IDENTIFIES NO CONFLICT IN THE LOWER COURTS THAT WOULD NECESSITATE THIS COURT'S REVIEW.

As set forth above, while the Petitioners assert that decisions of the Second, Seventh, Eighth and Ninth Circuits all support their position that claims falling within the purview of the RLA are subject to complete preemption, such is not the case. The decisions of the Second and Seventh Circuits cited by the Petitioners, *Shafii v. British Airways, PLC*, 83 F.3d 566 (2nd Cir. 1996) and *O'Brien v. Duluth, Missabe & Iron Range Ry.*, 27 F.3d 569 (7th Cir. 1994), address neither removal nor complete preemption, concerning, rather, only ordinary preemption issues. As this Court has made clear, the concepts of ordinary preemption and complete preemption are wholly different, and the mere existence of ordinary federal preemption will not confer federal court removal jurisdiction upon a cause of action. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393.

In light of this Court's decisions in *Beneficial Nat'l Bank* and *Hawaiian Airlines*, the Eighth and Ninth Circuit decisions cited by Petitioners as being in conflict

with the Eleventh Circuit decision below, are inappropriate for review by this Court. *Hawaiian Airlines* and *Beneficial Nat'l Bank*, together, effectively resolve any uncertainty which may have existed concerning application of the complete preemption doctrine to federal statutes.

The Eighth Circuit in *Gore v. Trans World Airlines*, 210 F.3d 944 (8th Cir. 2000), held that state law claims of false arrest, negligence, libel and slander, and invasion of privacy, asserted by an airline employee against his employer, were completely preempted by the RLA. 210 F.3d at 951. Specifically, upon hearing that Gore was alleged to have made statements to the effect that he intended to kill himself and various other TWA employees, TWA took various actions, including holding Gore against his will and publicizing his alleged statements, through the posting of notices and otherwise. The Eighth Circuit, in reviewing the district court's denial of Gore's motion to remand the case to state court following removal, held that, because the collective bargaining agreement at issue required TWA to provide a safe working environment and to promptly investigate and handle complaints relating to worker safety, and because TWA would likely rely upon such provisions to defend its actions regarding Gore, Gore's state law claims were thus "inextricably intertwined" with the rights and duties created by the collective bargaining agreement, thus providing for federal removal jurisdiction. *Id.* at 950.

The "inextricably intertwined" test applied in *Gore* is wholly at odds with the tests prescribed by this Court in *Beneficial Nat'l Bank*. Specifically, *Gore* made no attempt to determine whether Congress had manifested its intent that state law claims between airline employees and their

employers be removable to federal court. Rather, the court in *Gore* created an overbroad test, inconsistent with any test propounded by this Court, pursuant to which virtually any state law claim can be said to be "intertwined" with the collective bargaining agreement and thus removable.

In *Hawaiian Airlines*, this Court held, in the context of ordinary preemption, that the plaintiff's state law claim of wrongful discharge was not preempted by the RLA, even though the plaintiff could have sought redress through the RLA's arbitral mechanism. In finding no preemption, the Court stated that "no proposed interpretation [of the RLA] demonstrates a clear and manifest congressional purpose to create a regime that broadly preempts substantive protections extended by the States, independent of any negotiated labor agreement." *Hawaiian Airlines*, 512 U.S. at 255-56.[1]

This Court's decision in *Hawaiian Airlines* clearly precludes application of the "inextricably intertwined" test espoused in *Gore*. First, the Court in *Hawaiian Airlines* cited to the decision in *Atchison, T.&S.F.R. Co. v. Buell*, 480 U.S. 557, 94 L. Ed. 2d 563, 197 S. Ct. 1410 (1987), which held that railroad employee claims arising under the Federal Employers' Liability Act ("FELA") would not be preempted by the RLA mandatory arbitration procedures, simply because the conduct at issue was subject to the collective bargaining agreement. The Court in *Atchison* held:

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[1] While the Court in *Hawaiian Airlines* addressed only the issue of ordinary preemption, the rulings therein precluded a finding that the RLA completely preempts state law, under the tests set forth in *Beneficial Nat'l Bank*.

> It is inconceivable that Congress intended that a worker who suffered a disabling injury would be denied recovery under the FELA simply because he might also be able to process a narrow labor grievance under the RLA to a successful conclusion.

480 U.S. at 564-65. Such holding is wholly inconsistent with the test espoused in *Gore*, pursuant to which virtually any state law claim will be swallowed up by the collective bargaining agreement and, thus, the RLA arbitral mechanism.

The *Gore* court failed to demonstrate any clear and manifest congressional intent to completely pre-empt substantive state law, much less to create removal jurisdiction under the RLA. This Court has held that "to discern Congress' intent, we examine the explicit statutory language and structure and purpose of the statute." See *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138, 111 S. Ct. 478, 483, 112 L. Ed. 2d 474 (1990) (holding that the explicit language, structure and purpose of a statute must demonstrate a congressional intent to pre-empt a state common law claim). The Eighth Circuit in *Gore*, failed to follow the standards established by this Court not only in *Hawaiian Airlines*, but also in its complete preemption decisions, including *Metropolitan Life, Franchise Tax Board* and, most recently, *Beneficial Nat'l Bank*.

Petitioners assert the Ninth Circuit decision in *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189 (9th Cir. 1983), as another example of a circuit court decision in conflict with the court below. *Schroeder*, however, was decided prior to and without the benefit of this Court's decisions in *Hawaiian Airlines* and *Beneficial Nat'l Bank*.

As such, like *Gore*, it applies no proper test for determining whether the complete preemption doctrine is applicable to the RLA, is inconsistent with *Beneficial Nat'l Bank*, and effectively equates the complete preemption doctrine with the concept of ordinary preemption.

As stated above, in light of its comprehensive analysis and decision in *Beneficial Nat'l Bank*, there is no need for the Court to revisit the foregoing issues herein. In the event that, in the wake of the *Beneficial Nat'l Bank* decision, the Eighth or Ninth Circuit persists in misapplying the law regarding complete preemption, the Court could review any such decisions as they are rendered.

CONCLUSION

The court below ruled correctly in accordance with the tests for complete preemption set forth in *Beneficial Nat'l Bank*. As such, this Court need not review such decision.

In *Beneficial Nat'l Bank*, the court found that federal legislation will be held to completely preempt state law, so as to provide for federal court removal jurisdiction, only (1) where Congressional intent to confer federal court jurisdiction is clearly manifested in the text of the statute or in the legislative history thereto, as in § 301 of the LMRA and § 502(a) of ERISA; or (2) where the statutory scheme wholly displaces state law by providing an exclusive cause of action, including the substantive law and the procedures governing such claims, as in the case of usury claims against national banks under the National Bank Act. As the RLA comes within neither of the two prongs of the *Beneficial Nat'l Bank* test, the court below correctly found that federal removal jurisdiction, based upon complete

preemption of state law, did not exist, remanding the Respondent's cause of action to state court.

As this Court has, earlier this year in *Beneficial Nat'l Bank*, clearly and explicitly set forth the tests for determining whether a federal statute will completely preempt state law, which tests clearly apply to preclude such preemption under the RLA, there is no need for the Court to revisit the issue in this context.

For the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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